

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
FEBRUARY 3, 2015**

Place: Room 119, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Cameron, DiDonna, Olvany, Voigt, Sini, Jr.

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat

Chairman Cameron opened the meeting at 8:05 P.M. and read the first agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Land Filling & Regrading Application #341, J. Scott Lesko, 16 West Elm Street. Proposing to regrade the back and side yards and install stormwater management in association with additions and alterations to the existing residence, and to perform related site development activities. The subject property is located on the south side of West Elm Street approximately 400 feet west of its intersection with Noroton Avenue, and is shown on Assessor's Map #21 as Lot #171 in the R-1/3 Zone. *PUBLIC HEARING OPENED 1/20/2015.*

Doug DiVesta, Professional Engineer, represented the applicant and explained that the proposal is to fill and regrade the backyard. Currently, the property slopes from the northeast down to the southwest. The proposal is to level off a portion of the backyard and Mr. DiVesta explained that stormwater management has been proposed for the house and the backyard. A detention area will be created and in accordance with comments from the Public Works Department, they will be including a level spreader emergency outflow from the underground detention area. He said that the retaining wall would be approximately two feet high to create the flatter, more usable backyard. Mr. Ginsberg noted that the comments from Darren Oustafine of the Public Works Department have resulted in the amended Site Plan. They have changed the outlet pipe to a level spreader.

Mr. DiVesta said that they will be abandoning the existing on-site septic system and will be connecting to the sanitary sewer in the street. This will need a permit from the Darien Public Works Department. In response to questions, Mr. DiVesta said that they had done test holes on the property and found hard pan but they did not encounter any ground water.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved.

Chairman Cameron read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #304, Flood Damage Prevention Application #345, Eleven Baywater Drive LLC, 11 Baywater Drive. Proposal to construct additions and alterations to the existing residence; install HVAC units on a platform; and

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perform related site development activities within regulated areas. The subject property is located on the south side of Baywater Drive approximately 25 feet east of its intersection with Waverly Road, and is shown on Assessor's Map #55 as Lot #101 & #102 in the R-NBD Zone. *PUBLIC HEARING OPENED 1/20/2015.*

Lance Zimmerman, Architect, represented the applicant and explained that the work involves a proposed addition to the house, including a larger garage for cars and boats. The garage structure will have large access doors facing the street and facing the adjacent waters of Long Island Sound so that boats can be moved directly from the garage to the water. Since the property is within the Flood Hazard Zone, they need a permit from the Planning & Zoning Commission.

Mr. Zimmerman explained that stormwater runoff from the proposed addition will be directed into two in-ground infiltrators to avoid any direct discharge into Long Island Sound. This will address the water quality issues but they are not trying to hold back water in order to minimize flooding. Mr. Zimmerman said that two air compressor units will be relocated to be on platforms at elevation 14, which is the expected base flood elevation (BFE). He noted that the house is at elevation 12 and there are no plans to elevate the house at this time. He said the applicant understands that the basement does occasionally flood. He said that the house was built in approximately 1920 and it is not practical to lift this particular old structure. He said that the construction work that they are doing will be done to minimize flood damage in the sense that all the construction materials below flood level will be masonry or similar material. Mr. Zimmerman said that the total cost of all the renovations and improvements to the house will be less than 50% of the \$750,000 value of the existing house. Therefore, the proposed work is not a "substantial improvement" as defined by the Regulations and the existing house does not need to be raised to be above flood level. There was some discussion regarding this exemption and Mr. Ginsberg said that when the Zoning and Building Permit applications are submitted, the materials will be reviewed again to make sure that the total value of renovation work is less than 50% of the value of the structure. In response to a question, Mr. Zimmerman said that the proposed building coverage is less than 20% of the lot area and therefore complies with the Regulations.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved.

At about 8:25 p.m., Chairman Cameron then read the following agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #340, Michael & Charlotta West, 45 Swift's Lane. Proposal to excavate, fill and regrade in order to accommodate a replacement house, pool, and driveway, and to perform related site development activities. The subject property is located on the south side of Swift's Lane approximately 1,300 feet east of its intersection with Ring's End Road, and is shown on Assessor's Map #50 as Lot #9 in the R-1 Zone. *PUBLIC HEARING OPENED 1/20/2015.*

Attorney Robert Maslan represented the applicant and explained that this property is at the right hand end of Swift's Lane and the southeast boundary of the property is Gorham's Pond. A portion of the existing property is within the Flood Hazard Zone but the proposed work is not in the Flood

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Zone. Attorney Maslan said that the plan is to remove the existing residence and construct a new single-family house. He said that on the southwest corner of the property is a little cottage that is not a dwelling or residence. It does not contain any kitchen or cooking facilities. That structure will remain while the replacement house is being constructed. He submitted a copy of the deed and a copy of photographs of the site and the existing residence. He said that the proposed house will require excavation into the hill on the west side of the existing house. He said he understands there are three or four letters of support from several of the neighbors who have reviewed the plans.

John Martucci, Professional Engineer, said that he has reviewed the plans and has designed the stormwater drainage system in accordance with the Regulations. He said that he used the "fresh meadow approach" that does not take any engineering credit for the existing impervious surfaces. He said that stormwater runoff from the house and driveway will be directed into infiltrators, which will allow it to percolate into the ground. He said that this actually reduces the peak rate of discharge although doing so is not required. He said that the excavation into the hillside will require a cut of approximately 500 cubic yards of material. Approximately 450 cubic yards will be re-used on the site. The balance will be removed from the site. In response to questions, Mr. Martucci said that they did test pits of the soil in the northern section of the property, not near the proposed infiltrator because he was concerned about possibly excavating into the existing on-site septic system that is currently in use. The test results were good and he believes that the soil conditions on the site are fairly consistent. As part of the proposed work, they will be connecting the new house into the sanitary sewer system in the street.

Chairman Cameron asked if it was possible for a vegetative area to be created along the water's edge of Gorham's Pond. This could serve as a wildlife habitat and as a filter of stormwater runoff from the lawn. She said that it is important to minimize the movement of herbicides, insecticides and pesticides from the lawn and prevent them from getting into the Pond. She strongly recommended the use of a vegetative buffer along portions of Gorham's Pond. It would not need to be high or block the view but it would be a series of aesthetically pleasing, low vegetation to filter runoff.

In response to questions, Mr. Martucci said they will probably not need to use any hoe ramming or rock chipping as this site. Mrs. Cameron suggested that if such hoe ramming is necessary, that it be limited to no more than five consecutive days. Mr. Martucci said that they will start excavating on the site and if they discover a problem, they will determine if it is more appropriate to drill and blast or to use a hoe ramming technique. He said that he does not anticipate much solid rock. He said that they will do the excavation and then decide if blasting or hoe ramming is necessary.

Dr. Bruce Phelps of 35 Swift's Lane spoke in favor of the application. He said he has reviewed the plans and supports the proposal.

In response to questions, it was noted that the cottage has its own on-site septic system which will be preserved and repaired if possible or will be replaced if needed. Attorney Maslan said that his client will look into the possibility of planting an environmental strip along the waters of Gorham's Pond. He said that if the client is willing to do that, they will review the plans with staff before implementing any changes.

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There were no further comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Sini, seconded by Mr. Voigt and unanimously approved.

Chairman Cameron read the following agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #342, John Gallagher & Meredith Re, 18 Raymond Heights. Proposing to fill and regrade the property and install stormwater management in association with the construction of a replacement single-family residence, and to perform related site development activities. The property is situated on the east side of Raymond Heights approximately 315 feet north of its intersection with Raymond Street and is shown on Assessor's Map #36 as Lot #126-1, and is located in an R-1/5 Zone. *PUBLIC HEARING OPENED 1/20/2015.*

Doug DiVesta, Professional Engineer, represented the applicants and explained that this is a small piece of property located on the private road known as Raymond Heights. They obtained a variance from the Zoning Board of Appeals in December 2014 and wish to proceed with the construction at this time. He said that they have done soil testing as part of the drainage system design. He said that much of the driveway will include grass pavers to minimize the amount of runoff and to maximize the infiltration of water into the ground. He said that since Raymond Heights is a private road, the project does not need approval from the Darien Public Works Department. Mr. DiVesta said that they have added the soil data to the revised plan and have included a footing drain outlet on the plan and labeled it appropriately.

Mr. DiVesta said they will need to do some blasting for the removal of rock in the basement. He said that hoe ramming is not planned but they would like to leave that possibility open if possible. He said that if necessary, the Commission could limit the extent of hoe ramming and/or the timing of the hoe ramming. Mr. DiVesta said that they have reviewed the plans with the neighbors and that there are several letters of support that have been submitted to the Planning & Zoning Commission.

There were no comments at the public hearing from the neighbors. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Sini, seconded by Mr. Voigt and unanimously approved.

At about 8:45 p.m., Chairman Cameron read the following agenda item:

Continuation of Public Hearing regarding Proposed Amendment to the Darien Zoning Map (COZM #2-2014), Special Permit Application #246-B/Site Plan #251-B, Land Filling & Regrading Application #184-B/lot line adjustment, Sun Homes Darien, LLC, 36, 42 (formerly 0), and 48 Wakemore Street. Proposing to establish the Designed Community Residential (DCR) overlay zone on parcels totaling approximately 2.49+/- acres, and razing the existing three structures on those properties and constructing ten new structures containing fourteen market rate units and two affordable units to become Kensett II, and performing related site development

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activities. *PUBLIC HEARING OPENED 10/28/2014. DEADLINE TO CLOSE PUBLIC HEARING IS: 2/3/2015 UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

Attorney Bruce Hill represented the applicant and explained that there has already been approximately 6 hours and 40 minutes of public hearings regarding this matter. He said that he received an e-mail on Friday, January 30, 2015, and a letter from a neighbor today. He said that the applicant is proposing that the two below market rate units within the development will be accessed via Wakemore Street. He said that the applicant is not willing to change that design. He said that there were three lots and a total of five dwelling units that were located on Wakemore Street and he said that all but the affordable housing units (more properly, the below market rate "BMR" units) will be accessed from within Kensett Drive. Only the two affordable housing (BMR) units will be accessed from Wakemore Street. He said that this allows the affordable housing (BMR) units not to be part of the Home Owners Association and therefore not to have to pay for the maintenance of the access drive and other facilities within Kensett. Attorney Hill said that the two proposed below market rate units are not comparable in size to the market rate units because it would not be appropriate to have such large affordable (BMR) units. He said that Section 8-2i of the Connecticut General Statutes allows the Planning & Zoning Commission to adopt the Inclusionary Zoning Regulations. He said that the Planning & Zoning Commission adopted those Regulations and did not require that the affordable units be equal or have parity with the market rate units. He said that this makes great sense. He said that in 2007 when the DCR Zone was created for this property, part of the intent was to allow bigger units, whereas the previous zones allowing condominiums limit the size of the units to 1,500 square feet or similar size. He said that the Commission's intent was not to make big affordable housing (BMR) units and therefore the Inclusionary Zone Regulations do not include a requirement that the affordable units be the same size as the market rate units. Ms. Cameron asked if details of the price of the affordable units could be provided and documented. Attorney Hill said he will do so. Attorney Hill said that the smaller units will be more affordable than if larger units were created to be comparable to the market rate units. Ms. Cameron said that Section 8-30g of the State Statutes which allows for affordable housing projects to supersede the Zoning Regulations does require that the affordable (BMR) units be comparable. Attorney Hill agreed and noted that Section 8-30g is different than the Town adopted Inclusionary Zoning provisions within the Darien Zoning Regulations.

Attorney Hill said that all of the market rate units in Kensett are age targeted but the two below market rate units will be income restricted and will not necessarily be age targeted. Ms. Cameron asked if the applicant would specify that the age targeted units would have the master bedroom on the first floor. Attorney Hill said no, it was not appropriate for the Commission to dictate the floor plan within the development.

In response to other concerns and issues that have been raised by the neighbors and the Commission, Attorney Hill said that the emergency gate restricting access from Wakemore Street into Kensett and prohibiting egress from Kensett to Wakemore Street will be installed in accordance with the original approval. He also said that construction access for the remainder of the Kensett project will be through Kensett Drive, rather than from Wakemore Street. He noted that the exception would be the construction of the two below market rate units that will always front on, and have their access on, Wakemore Street. He noted that the gas line has been or will be provided by the developer to Wakemore Street but the developer is not responsible for installing the gas line in through the remaining portions of Wakemore Street. He said that the expense of

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installing the gas line in Wakemore Street rests with the gas company and/or the residents of Wakemore Street. He said that the paving of Wakemore Street will take place as promised by the developer. Attorney Hill said that some of the neighbors have indicated their preference that the two below market rates should be accessed only from Kensett Drive instead of Wakemore Street. He said that this will not happen. Attorney Hill said that all of the units in the development are age targeted and will remain so. They are not age restricted. Only the two below market rate units will not necessarily be age targeted. Attorney Hill said that the neighbors have raised a question about the maintenance of the drainage facility that allows water from the Wakemore Street area to drain through the Kensett project. He said that the maintenance of that drainage pipe through the Kensett site is not the responsibility of the developer or the Home Owners Association. He said that the maintenance and cleaning out of the trash rack should be done by adjacent owner on Wakemore Street because if the trash rack is not cleaned it would adversely affect the flow of water from Wakemore Street through the site.

Attorney Hill said that the Environmental Protection Commission (EPC) has not yet decided whether or not the proposed elimination of wetland on a portion of the subject property would be acceptable. He said that the Planning & Zoning Commission must close its public hearing and he had no objection to the Planning & Zoning Commission receiving the final report from the EPC and then coordinating their decision and finding with that of the EPC.

Attorney Hill said that going back to 2007 there were a number of promises made by the developer to the neighbors. He said that natural gas has been provided to Wakemore Street but will not be installed within Wakemore Street. He said that the screening has been installed and that the emergency gate at the end of Kensett Drive and the end of Wakemore Street will be provided.

Chairman Cameron noted that some of the rain gutter leaders from the development have been tied into the Wakemore Street drainage system even though they were not supposed to be. John Watson, Professional Engineer representing the applicant, said that 6 or 7 units on the south side were connected into the drainage system. Attorney Hill said that Joe Canas, the engineer hired by the Town, agrees that these leaders that will remain connected into the Wakemore Street drainage system are not significant.

Chairman Cameron reviewed the list of issues and concerns. She said she still wants to see a covered, safe area for school children to wait for the school bus near the intersection of Wakemore Street and Hoyt Street. Mr. Sini wanted to know if the below market rate units would be age restricted. Attorney Hill said that they will do so if they are legally allowed to restrict them. There will be income restrictions, and may or may not have age restrictions. Attorney Hill said that much time has been spent on issues that are not relevant to the proposed zone change and expansion of the Kensett project. He understands that the neighbors have had flooding concerns and he has distilled the other issues down to the Wakemore Street drainage, the unit size, and the age targeted marketing of the units. He said that the DCR Zoning was intended to create units that are 3,000 to 3,500 square feet, which is much larger than previously approved condominium communities. He said that the developer has not pulled a 'bait and switch' on the Commission and that such an allegation is unfair. He said that the maximum average size of units within the entire development can be up to 3,900 square feet. He said all of the units are age targeted and that Commission specified in its resolution that they are not age restricted. He said that they have been designed and built units to appeal to empty nesters and there are some people who have school children that have

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decided to purchase units in the project. He said that he recently had two closings, one of which involved a couple who were over 50 and the other couple were over 70. The older couple purchased the property in part because it has an elevator.

Attorney Hill said that there are 26 Certificates of Occupancy that have been obtained and that this verifies that the developer has done what they said they would do and more. He said they have spent approximately \$100,000 to improve the conservation easement area and they have done many things for the neighbors that were not required. He said that the housing units satisfy a very real need in the community but it is not a retirement community. Mr. Sini said that one of the traffic concerns is involving the congestion that happens before school busses arrive to pick up or drop off school children. This congestion happens near the intersection of Wakemore Street and Hoyt Street. He noted that the corner lot is owned by the developer and that no construction is planned at this time on that corner lot or during the construction of Kensett II. Attorney Hill said that the corner lot was purchased at full value as a building lot and the developer has no plans for development of it at this time. He said that the developer will not commit to using this valuable building lot as a parking area or for a student waiting area.

Mr. Voigt asked how the Kensett project is age targeted versus any other development. Attorney Hill said they are age targeted by the possibility of elevators and by not having any outside playground areas and not having any outside maintenance required by residents. Mr. Voigt said that maybe the zoning regulation is not functioning as it was intended because school age children have been moving in to the development and there are more units to be sold and occupied and now more units are proposed to be added. Attorney Hill said that they gave the accurate counts of the numbers of children in the development. Ms. Cameron said that the clear understanding was that the applicants proposal was for an adult community and the applicant represented that there would be very few, if any, school age children. Attorney Hill said that he understands very well the stress on the school system because he has worked for school building committees. He said that the school age forecast is based on the best projections available but it is not perfect. He said that the property could have had several, large single family houses with big backyards and many school children, but that the applicant and Commission decided it would be better to be developed utilizing the DCR Zoning Regulations with an age targeted project. He said that the market has substantially changed since 2007 (when the original approval was obtained) and 2012 when the construction started.

Bob Dale, one of the managing partners, said that in 2007 they had just completed similar projects and their intent was to create a development that would attract empty nester buyers. He said that the empty nester market disappeared because their homes were not selling at high prices from 2007 to 2011. He said that from 2008 to today, this is the only major project of this type under construction in the area. He said that there is also been a change in the preferences of younger buyers who are not always looking for the standard house on two acres. He said that age targeting is a marketing term because it is more appealing to those people who do not have school children. Mr. DiDonna said that the economy has recovered substantially and wondered whether the project was still age targeted. Mr. Dale said that it is age targeted and that more local residents are looking at Kensett as an alternative to their existing home and more people from outside the area are looking at Kensett as an opportunity for them to move into Darien. He said that in the beginning many local residents had to see the units being built to order to believe the project would move forward. Attorney Hill said that some of the buyers have very young children even though they

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know there are no playgrounds or other amenities for children and other buyers have children that are going to college soon.

Mr. Olvany asked about the possibility of a sidewalk along Hoyt Street. He said that in a previous meeting he was told that the developer would provide a schematic showing where a sidewalk could be installed. Attorney Hill said that there is no such schematic and that it is self-evident that a sidewalk cannot be constructed along the easterly portion of Hoyt Street due to a number of factors.

Chairman Cameron asked if there are any members of the public who have anything new to say to the Commission. She noted that the Commission has received and reviewed the letters from the public.

Patrick Hirscht of 17 Wakemore Street said that there are 16 proposed units to replace the 5 units that were removed at the end of Wakemore Street. He said that the affordable housing units should be incorporated into the Kensett Drive access development and they should not have access onto Wakemore Street. He said that the affordable (BMR) units should be included in the Kensett development because they are part of that development. He questioned the maintenance of those units and wondered whether the residents would be able to sufficiently maintain them.

Oleg Starovoitov said that his Wakemore Street drainage system does not include a catch basin or any trash rack facility on his property. Therefore he should not be responsible for maintenance of that drainage system. Mr. Ginsberg noted that Mr. Starovoitov's e-mail had been received and distributed to the Commission members so that they could review it prior to the meeting.

Nikki Perkins of 25 Wakemore Street said that she appreciated the time and effort that the Commission has put into this matter.

There being no further discussion or comments, the following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter but will allow the submission of the final report and/or decision from the EPC and will take that into account. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved.

At about 10:00 p.m., Chairman Cameron then read the following agenda item:

GENERAL MEETING

Approval of Minutes

<i>January 6, 2015</i>	<i>Public Hearing</i>
<i>January 13, 2015</i>	<i>General Meeting</i>
<i>January 20, 2015</i>	<i>Public Hearing/General Meeting</i>

Due to the late hour, it was decided that the minutes would be discussed at the next scheduled meeting on February 10, 2015.

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Discussion ONLY on the following if the public hearing has been closed (time permitting)

Coastal Site Plan Review #304, Flood Damage Prevention Application #345, Eleven Baywater Drive LLC, 11 Baywater Drive. Proposal to construct additions and alterations to the existing residence; install HVAC units on a platform; and perform related site development activities within regulated areas.

Land Filling & Regrading Application #340, Michael & Charlotta West, 45 Swift's Lane. Proposal to excavate, fill and regrade in order to accommodate a replacement house, pool, and driveway, and to perform related site development activities.

Land Filling & Regrading Application #341, J. Scott Lesko, 16 West Elm Street. Proposing to regrade the back and side yards and install stormwater management in association with additions and alterations to the existing residence, and to perform related site development activities.

Land Filling & Regrading Application #342, John Gallagher & Meredith Re, 18 Raymond Heights. Proposing to fill and regrade the property and install stormwater management in association with the construction of a replacement single-family residence, and to perform related site development activities.

Commission members briefly discussed the above four items, with Commission members noting that they had no major concerns regarding these four applications, however, consideration needs to be given to the applications which will include hoe-ramming or blasting to minimize impacts on neighbors. No motions were made and no actions were taken on these matters. Actions will be taken at a future meeting.

There being no further business, the following motion was made: That the Commission close the meeting. The motion was made by Mr. Voigt, seconded by Mr. Sini and unanimously approved. The meeting was adjourned at 10:04 P.M.

Respectfully submitted,

David J. Keating
Planning & Zoning Assistant Director

02.03.2015min